

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**VIOLA MARTINEZ and
LAURO MARTINEZ,**

Plaintiffs,

v.

No. 1:14-cv-968

**SAFECO INSURANCE COMPANY OF AMERICA
and LIBERTY MUTUAL GROUP,**

Defendants.

NOTICE OF REMOVAL

Defendant Safeco Insurance Company of America (“Safeco”), through its attorneys of record, RAY, MCCHRISTIAN & JEANS, P.C. (Shannon A. Parden and Shona L. Zimmerman), hereby files this Notice of Removal of the above-captioned matter to the United States District Court of New Mexico from the Second Judicial District Court, County of Bernalillo, State of New Mexico, as provided by 28 U.S.C. §§ 1441, 1146. Safeco states as follows:

1. Plaintiffs Viola Martinez and Lauro Martinez commenced this action in the Second Judicial District Court of the State of New Mexico on February 22, 2013. Safeco was served with the Summons and Complaint on October 2, 2014. This Notice of Removal is timely.

2. This is a civil action, of which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332. This cause of action may be removed to this Court pursuant to 28 U.S.C. § 1441, in that it is a civil action wherein the matter in controversy exceeds the sum or value of seventy five thousand dollars (\$75,000.00), exclusive of interest or costs, and the Plaintiffs and Defendant(s) are citizens of different states.

3. Plaintiffs are residents of Bernalillo County, State of New Mexico. Safeco is a foreign corporation incorporated under the laws of the State of New Hampshire, with its principal place of business located in Boston, Massachusetts. Safeco is authorized to do business in the State of New Mexico. Liberty Mutual Group is a nonexistent entity and it has not been served. The parties are diverse.

4. Because Liberty Mutual Group is a nonexistent entity and it has not been served, Safeco has not sought Liberty Mutual Group's consent to remove this lawsuit to this Court.

5. In their Complaint, Plaintiffs allege that, on February 22, 2007, Plaintiff Viola Martinez was injured in a motor vehicle accident while driving her motor vehicle. Plaintiff Viola Martinez alleges that she incurred injuries as a result of the accident.

6. Plaintiffs settled their claims against the at-fault driver for the liability limits of the driver's auto policy, \$25,000.00.

7. Plaintiffs allege that at the time of the accident, Safeco had issued a policy of insurance to Plaintiffs, Policy No. Y6517552 ("Policy"). Plaintiffs allege that the Policy has uninsured / underinsured motorist ("UM/UIM") benefits. Safeco has paid \$1,618.89 in Med Pay benefits as a result of the accident.

8. The Policy has stacked UM/UIM bodily injury limits of \$75,000.00 per person. There is a \$26,618.89 offset from the \$75,000.00 due to Plaintiffs' recovery of \$25,000.00 from the at-fault driver and the \$1,618.89 paid under the Med Pay section of the Policy, leaving \$48,391.11 in potentially available UIM coverage under the Policy.

9. Plaintiffs seek UIM benefits under the Policy. Plaintiffs first demanded policy limits. At present, their demand under the Policy is for \$45,000.00. *See* Exhibit A hereto, October 15, 2013 letter. Safeco disputes the amount of Plaintiffs' alleged damages.

10. In their Complaint, Plaintiffs allege breach of contract. Plaintiffs also allege a common law bad faith claim, alleging that Safeco is “disputing, disregarding, failing to investigate, ignoring or denying aspects of the claim, coverage, and conduct giving rise to *compensatory and punitive damages* coupled with refusing to consider the factual basis for the uninsured/underinsured motorist claim in violation of Plaintiffs’ rights and interests.” [Plaintiffs’ Complaint, Paragraph 41 (emphasis added).] Plaintiffs also allege that as a result of “Defendants’ wrongful conduct, Plaintiff Viola Martinez did suffer injuries and damages, including, but not limited to, emotional and physical injuries, past incurred medical expenses, future medical expenses, loss of use of her vehicle, property damages, loss of life’s enjoyment, loss of household services, and emotional and physical pain and suffering, all to Plaintiff’s great loss....” (Plaintiffs’ Complaint, Paragraph 22.) Plaintiffs also seek a declaratory judgment that they are entitled to legally recover UIM benefits under the Policy. Plaintiffs seek UIM benefits; compensatory, punitive, and exemplary damages as a result of Safeco’s actions; costs; and pre- and post-judgment interest.

11. Based upon the facts alleged in the Complaint, and the known facts at the time of this removal, the preponderance of the evidence establishes that Plaintiffs seek damages in excess of the jurisdictional requirement contained in 28 U.S.C. § 1332. *See* Declaration of Shannon Parden, attached hereto as Exhibit B (assessing potential value of the alleged common law bad faith claim and punitive damages arising from the alleged bad faith claim); *Woodmen of World Life Ins. Soc’y v. Manganaro* 342 F.3d 1213, 1218 (10th Cir. 2003). State law permits a punitive damages award for the common law bad faith claim if the appropriate elements are met. NMRA (2014) UJI 13-1718. Additionally, state law permits an award of attorney fees to the first

party insured if the insurer acted unreasonably in denying the claim, as alleged by Plaintiffs in Paragraph 41 of the Complaint. NMSA (1978) 39-2-1.

12. Safeco attaches to this Notice, as Exhibit C, a copy of all process and pleadings served upon it in this cause of action and all other documents filed in New Mexico State Court.

13. The Civil Cover Sheet is attached hereto as Exhibit D.

14. Safeco will give written notice of the filing of this notice as required by 28 U.S.C. § 1446(d).

WHEREFORE, Safeco respectfully requests that this action proceed in this Court as an action properly removed to it.

DATED: October 28th, 2014

Respectfully submitted,

RAY, MCCHRISTIAN & JEANS, P.C.

By: /s/ Shannon A. Parden

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I hereby certify that a copy of the foregoing pleading was served through electronic mail and / or the CM/ECF filing system this 28th day of October, 2014, to all counsel as follows:

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/s/ Shannon A. Parden
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